

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION**

CHRISTOPHER WEST

PLAINTIFF

VERSUS

CIVIL ACTION NO. 2:07CV215-P-A

DRURY COMPANY

DEFENDANT

ORDER

This cause is before the Court on the defendant's Motion for Summary Judgment [89] and its Motion for Partial Summary Judgment [91]. The Court, having reviewed the motions, the response, and being otherwise fully advised in the premises, finds as follows, to-wit:

The first of defendant's motions seeks summary judgment based on West's alleged inability to sustain his burden of proof with regard to the issue of whether negligence on the part of Drury Company proximately caused damages to plaintiff. Review of the record before the Court demonstrates that there is triable issue of fact with regard to West's negligence claim against the defendant. Accordingly, summary judgment is inappropriate. In ruling on a motion for summary judgment, the court is not to make credibility determinations, weigh evidence, or draw from the facts legitimate inferences for the movant. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). Rather, the evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in its favor. Id. at 255. The United States Supreme Court has granted the trial court some degree of flexibility when confronted with a summary judgment motion: "Neither do we suggest . . . that the trial court may not deny summary judgment in a case where there is reason to believe that the better course would be to proceed to a full trial." Id.

Drury Company's other dispositive motion seeks dismissal of West's punitive damages claim. In support of its motion, defendant points out the high threshold for recovery and the concomitant greater burden of proof in contrast to the evidence of record. A thorough review of the record reveals no basis upon which a reasonable trier of fact could determine by clear and convincing evidence that Drury Company acted with malice or reckless disregard to the rights or safety of the plaintiff. In view of West's inability to demonstrate a triable issue of fact on the matter of punitive damages, Drury Company is entitled to dismissal of the punitive damages claim against it. Accordingly,

IT IS, THEREFORE, ORDERED AND ADJUDGED that the defendant's Motion for Summary Judgment [89] is not well-taken and should be, and hereby is, DENIED. IT IS FURTHER ORDERED that defendant's Motion for Partial Summary Judgment [91] is well-taken and should be, and hereby is, GRANTED. IT IS FURTHER ORDERED that plaintiff's punitive damages claim should be, and hereby is, DISMISSED WITH PREJUDICE.

SO ORDERED, this the 20th day of January, 2009.

/s/ W. Allen Pepper, Jr.
W. ALLEN PEPPER, JR.
UNITED STATES DISTRICT JUDGE